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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D-2003 63729

JEFFREY LAM
200 Brannan Street, #340
San Francisco, CA 94107

ACCUSATION

Physical Therapist License No. PT 27810

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about November 14, 2002, the Physical Therapy Board of California issued Physical Therapist License Number PT 27810 to Jeffrey Quang Lam ("respondent"). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2008 unless renewed.

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JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code¹ unless otherwise indicated.

4. Section 2609 of the Code states:

“The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.”

5. Section 2655 of the Code states:

“As used in this article:

(a) ‘Physical therapist’ means a physical therapist licensed by the board.

(b) ‘Physical therapist assistant’ means a person who meets the qualifications stated in Section 2655.3 and who is approved by the board to assist in the provision of physical therapy under the supervision of a physical therapist who shall be responsible for the extent, kind, and quality of the services provided by the physical therapist assistant.

(c) ‘Physical therapist assistant’ and ‘physical therapy assistant’ shall be deemed identical and interchangeable.”

6. Section 2655.7 of the Code states:

“Notwithstanding Section 2630, a physical therapist assistant may assist in the provision of physical therapy service provided the assistance is rendered under the supervision of a physical therapist licensed by the board.”

7. Section 2630 of the Code provides:

It is unlawful for any person or persons to practice, or offer to practice, physical therapy in this state for compensation received or expected, or to hold himself or herself out as a physical therapist, unless at the time of so doing the person holds a valid, unexpired, and

1. All statutory references are to the Business and Professions Code unless otherwise specified.

1 unrevoked license issued under this chapter.

2 Nothing in this section shall restrict the activities authorized by their licenses on
3 the part of any persons licensed under this code or any initiative act, or the activities authorized
4 to be performed pursuant to Article 4.5 (commencing with section 2655) or Chapter 7.7
5 (commencing with section 3500).

6 A physical therapist licensed pursuant to this chapter may utilize the services of
7 one aide engaged in patient-related tasks to assist the physical therapist in his or her practice of
8 physical therapy. "Patient-related task" means a physical therapy service rendered directly to the
9 patient by an aide, excluding non-patient-related tasks. "Non-patient-related task" means a task
10 related to observation of the patient, transport of the patient, physical support only during gait or
11 transfer training, housekeeping duties, clerical duties, and similar functions. The aide shall at all
12 times be under the orders, direction, and immediate supervision of the physical therapist.

13 Nothing in this section shall authorize an aide to independently perform physical therapy or any
14 physical therapy procedure. The board shall adopt regulations that set forth the standards and
15 requirements for the orders, direction, and immediate supervision of an aide by a physical
16 therapist. The physical therapist shall provide continuous and immediate supervision of the aide.
17 The physical therapist shall be in the same facility as, and in proximity to, the location where the
18 aide is performing patient-related tasks, and shall be readily available at all times to provide
19 advice or instructions to the aide. When patient-related tasks are provided to a patient by an aide,
20 the supervising physical therapist shall, at some point during the treatment day, provide direct
21 service to the patient as treatment for the patient's condition, or to further evaluate and monitor
22 the patient's progress, and shall correspondingly document the patient's record.

23 The administration of massage, external baths, or normal exercise not a part of a
24 physical therapy treatment shall not be prohibited by this section.

25 8. Section 2620.7 of the Code provides:

26 (a) A physical therapist shall document his or her evaluation, goals, treatment
27 plan, and summary of treatment in the patient record.

28 (b) A physical therapist shall document the care actually provided to a patient in

1 the patient record.

2 (c) A physical therapist shall sign the patient record legibly.

3 (d) Patient records shall be maintained for a period of no less than seven years
4 following the discharge of the patient, except that the records of unemancipated minors shall be
5 maintained at least one year after the minor has reached the age of 18 years, and not in any case
6 less than seven years.

7 9. Section 2608.5 of the Code provides:

8 Each member of the board, or any physical therapist appointed by the board, may
9 inspect, or require reports from, a general or specialized hospital or any other facility providing
10 physical therapy care, treatment or services and the physical therapy staff thereof, with respect to
11 the physical therapy care, treatment, services, or facilities provided therein, and may inspect
12 physical therapy patient records with respect to the care, treatment, services, or facilities. The
13 authority to make inspections and to require reports as provided by this section shall not be
14 delegated by a member of the board to any person other than a physical therapist and shall be
15 subject to the restrictions against disclosure described in Section 2263.

16 10. Section 2660 of the Code provides, in pertinent part, that the Board may
17 suspend, revoke or impose probationary conditions upon any license for unprofessional conduct
18 that includes, ***but is not limited to***, one or any combination of the following causes:

19 (h) Gross negligence in his or her practice as a physical therapist or physical
20 therapy assistant.

21 (i) Violating or attempting to violate directly or indirectly, . . . any provision
22 or term of this chapter or of the ***State Medical Practice Act***. (Emphasis added)

23 (j) The aiding or abetting of any person to violate this chapter or any regulations
24 duly adopted under this chapter.

25 (k) The aiding or abetting of any person to engage in the unlawful practice of
26 physical therapy.

27 11. Section 2655.92 of the Code states:

28 “The board may adopt regulations as reasonably necessary to carry out the

1 purposes of this article. The board shall adopt a regulation formulating a definition of the term
2 ‘adequate supervision’ as used in this article.”

3 12. Section 1398.44 of Title 16 of the California Code of Regulations states,
4 in pertinent part:

5 “1398.44. Adequate Supervision Defined.

6 “A licensed physical therapist shall at all times be responsible for all physical
7 therapy services provided by the physical therapist assistant. The supervising physical therapist
8 has continuing responsibility to follow the progress of each patient, provide direct care to the
9 patient and to assure that the physical therapist assistant does not function autonomously.

10 Adequate supervision shall include all of the following in pertinent part:

11 (a) The supervising physical therapist shall be readily available in person
12 or by telecommunication to the physical therapist assistant at all time while the physical therapist
13 assistant is treating patients. The supervising physical therapist shall provide periodic on site
14 supervision and observation of the assigned patient care rendered by the physical therapist
15 assistant.

16 (b) The supervising physical therapist shall initially evaluate each patient
17 and document in the patient record, along with his or her signature, the evaluation and when the
18 patient is to reevaluated.

19 (d) The supervising physical therapist shall reevaluate the patient as
20 previously determined, or more often if necessary, and modify the treatment, goals and plan as
21 needed. The reevaluation shall include treatment to the patient by the supervising physical
22 therapist. The reevaluation shall be documented and signed by the supervising physical therapist
23 in the patient's record and shall reflect the patient's progress toward the treatment goals and when
24 the next reevaluation shall be performed.

25
26 (f) Within seven (7) days of the care being provided by the physical
27 therapist assistant, the supervising physical therapist shall review, cosign and date all
28 documentation by the physical therapist assistant or conduct a weekly case conference and

document it in the patient record. Cosigning by the supervising physical therapist indicates that the supervising physical therapist has read the documentation, and unless the supervising physical therapist indicates otherwise, he or she is in agreement with the contents of the documentation.

(g) There shall be a regularly scheduled and documented case conference between the supervising physical therapist and physical therapist assistant regarding the patient. The frequency of the conferences is to be determined by the supervising physical therapist based on the needs of the patient, the supervisory needs of the physical therapist assistant and shall be at least every thirty calendar days.

(h) The supervising physical therapist shall establish a discharge plan. At the time of discharge, or within 7 (seven) days thereafter, a supervising physical therapist shall document in the patient's record, along with his or her signature, the patient's response to treatment in the form of a reevaluation or discharge summary."

13. Title 16, Section 1399 of the CCR provides:

A physical therapy aide is an unlicensed person who assists a physical therapist and may be utilized by a physical therapist in his or her practice by performing nonpatient related tasks, or by performing patient related tasks.

(a) As used in these regulations:

(1) A "patient related task" means a physical therapy service rendered directly to the patient by an aide, excluding nonpatient related tasks as defined below.

(2) A "nonpatient related task" means a task related to observation of the patient, transport of patients, physical support only during gait or transfer training, housekeeping duties, clerical duties and similar functions.

(b) "Under the orders, direction and immediate supervision" means:

(1) Prior to the initiation of care, the physical therapist shall evaluate every patient prior to the performance of any patient related tasks by the aide. The evaluation shall be documented in the patient's record.

(2) The physical therapist shall formulate and record in the patient's

1 record a treatment program based upon the evaluation and any other information available to the
2 physical therapist, and shall determine those patient related tasks which may be assigned to an
3 aide. The patient's record shall reflect those patient related tasks that were rendered by the aide,
4 including the signature of the aide who performed those tasks.

5 (3) The physical therapist shall assign only those patient related tasks that
6 can be safely and effectively performed by the aide. The supervising physical therapist shall be
7 responsible at all times for the conduct of the aide while he or she is on duty.

8 (4) The physical therapist shall provide continuous and immediate
9 supervision of the aide. The physical therapist shall be in the same facility as and in immediate
10 proximity to the location where the aide is performing patient related tasks, and shall be readily
11 available at all times to provide advice or instruction to the aide. When patient related tasks are
12 provided to a patient by an aide the supervising physical therapist shall at some point during the
13 treatment day provide direct service to the patient as treatment for the patient's condition or to
14 further evaluate and monitor the patient's progress, and so document in the patient's record.

15 (5) The physical therapist shall perform periodic re-evaluation of the
16 patient as necessary and make adjustments in the patient's treatment program. The re-evaluation
17 shall be documented in the patient's record.

18 (6) The supervising physical therapist shall countersign with their first
19 initial and last name, and date all entries in the patient's record, on the same day as patient
20 related tasks were provided by the aide.

21 14. Section 2661.5 (a) of the Code states:

22 "In any order issued in resolution of a disciplinary proceeding before the board,
23 the board may request the administrative law judge to direct any licensee found guilty of
24 unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of
25 the investigation and prosecution of the case."

26 EVENTS, ACTS OR OMISSIONS

27 15. On or about December of 2003, the Physical Therapy Board of California
28 received a complaint which alleged, among other things, that aides were independently seeing

1 patients at Active Rehab Physical Therapy in El Sobrante without adequate supervision. The
2 Division of Investigation (“DOI”) thereafter conducted an investigation on behalf of the Board.

3 16. On or about June 3, 2005, pursuant to section 2608.5 of the Code, a board
4 appointed physical therapist, Lee Ann Banducci, conducted an onsite inspection of respondent’s
5 physical therapy practice. During this visit, Ms. Banducci observed Catherine
6 Bagsic, a physical therapy assistant (PTA) supervising Patricia Gonzales, an aide, in the
7 treatment of physical therapy patients. No physical therapist was on site. During this on-site
8 visit, when Ms. Bagsic was asked to contact her supervising physical therapist, she attempted to
9 page respondent by telephone several times without receiving a call back. Respondent finally
10 returned his page from Ms. Bagsic approximately one hour after the first attempt was made by
11 Ms. Bagsic to reach him.

12 17. The physical therapy board consultants and investigator subsequently
13 conducted a records audit at Active Rehab Physical Therapy in El Sobrante where respondent
14 also treated patients ².

15 18. A review of Patient SC’s record revealed that respondent performed an
16 initial evaluation on May 11, 2005. On May 20, 2005, a treatment note is written by Bagsic,
17 PTA, that is not co-signed by respondent, her supervising PT. There is no weekly conference
18 between respondent and Bagsic documented in the record. There is no discharge summary
19 prepared by respondent in this record even though a discharge summary must be completed by
20 the supervising therapist within seven days of the final visit. SC’s final visit was on May 20,
21 2005.

22 19. A review of Patient BP’s record revealed that BP was initially evaluated
23 by respondent on 11/29/04 for right knee pain with follow up visits performed by respondent on
24 12/07/04, 12/13/04, and 12/27/04. BP had visits on 12/15/04, 12/20/04, 1/24/05, 1/26/05,
25 1/28/05, 1/31/05, 2/02/05, and 2/04/05 and these visits are documented in the record by Bagsic,

27
28 2. Names of patients were redacted from the physical therapy records and replaced with a
letter or number as an identifier.

PTA, and are not co-signed by respondent. There is no weekly conference documented in the record between Bagsic and respondent as to this patient's treatment. Patient BP resumed therapy on 1/24/05 after a 28 day hiatus. There is no re-evaluation documented in the record by respondent prior to Bagsic, PTA, resuming therapy with this patient. Between 12/15/04 and 2/04/05, Bagsic, PTA performed 9 out of the 10 treatments on this patient with no case conference documented between respondent and Bagsic, PTA.

20. A review of Patient MR's record revealed that on 05/25/05, P. Gonzales, PT Aide, performed and documented treatment for this patient. The progress note is co-signed by respondent, however, there is no documentation in the record that respondent provided any direct treatment or evaluation for this patient on this date.

21. A review of Patient SW's record revealed that on 6/01/05 P. Gonzales, PT Aide, performed and documented treatment for this patient. The progress note is co-signed by respondent, however, there is no documentation in the record that respondent provided any direct treatment or evaluation for this patient on this treatment date.

CAUSES FOR DISCIPLINARY ACTION

22. Respondent is subject to disciplinary action based upon the events, acts, or omissions, set forth herein above, pursuant to Business and Professions Code sections: 2660 (unprofessional conduct); and/or 2660 (h) (gross negligence in his or her practice in that respondent's lack of adequate supervision of Bagsic, PTA, and Gonzales, PT Aide constituted an extreme departure from the standard of practice); and/or 2660 (i) (violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act; and/or 2660 (j) (aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter; and/or 2660 (k) (aiding or abetting of any person to engage in the unlawful practice of physical therapy); and/or for violating or attempting to violate, or assisting in or abetting the violating of, or aiding or abetting or conspiring to violate section 1398.44 of Title 16 of the California Code of Regulations, including subdivisions (a), and/or (b) and/or, (d), and/or (f), and/or (g), and/or (h); and/or section 1399 Title 16 of the California Code of Regulations, subdivision b(4) in that:

1 A. Respondent, as a supervising physical therapist, failed to write a discharge
2 summary for patient SC within seven days of her final visit of 5/20/05 [section 1398.44 (h) of
3 Title 16 of the California Code of Regulations]; and/or

4 B. Respondent, as the supervising physical therapist, failed to, within seven
5 (7) days of the care being provided by the physical therapist assistant, review, cosign and date all
6 documentation by the physical therapist assistant; and/or conduct a weekly case conference and
7 document it in the patient record [section 1398.44 (f) of Title 16 of the California Code of
8 Regulations]; and/or

9 C. Respondent, as the supervising physical therapist, failed to conduct a
10 regularly scheduled and documented case conference between the supervising physical therapist
11 and physical therapist assistant regarding patient BP [section 1398.44 (g) of Title 16 of the
12 California Code of Regulations]; and/or

13 D. Respondent, as the supervising physical therapist, failed to be readily
14 available in person or by telecommunication to the physical assistant at all times while the
15 assistant was treating patients [section 1398.44 (a) of Title 16 of the California Code of
16 Regulations]; and/or

17 E. Respondent, as the supervising physical therapist, failed to re-evaluate
18 patients after a significant hiatus in treatment prior to allowing the physical therapist assistant to
19 resume therapy which is an extreme departure from the standard of practice in violation of section
20 2660(h); and/or

21 F. Respondent permitted a PT aide to perform patient related tasks failed to
22 provide direct service to the patient as treatment for the patient's conditions and/or failed to
23 further evaluate the patient on the day of treatment and/or failed to monitor the patient's progress
24 and/or failed to document these services in the patient's record; and/or

25 G. The allegations of paragraphs 15 through 22, inclusive, are incorporated
26 herein as if fully set forth. Respondent's failure to adequately supervise PTA Bagsic and PT Aide
27 Gonzales constitutes an extreme departure from the standard of practice in violation of section
28 2660 (h) of the Code (gross negligence).

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking or suspending Physical Therapist License Number PT 27810, issued to respondent;
2. Ordering respondent to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5;
3. Taking such other and further action as deemed necessary and proper.

DATED: June 5, 2007

Original Signed By: _____
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California

Complainant